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No. 00-24

IN THE

Supreme Court of the United States

PGA TOUR, INC.,

Petitioner,

v.

CASEY MARTIN,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief for American Association of Adapted Sports Programs, America's Athletes with Disabilities, Dwarf Athletic Association of America, National Wheelchair Basketball Association, United States Cerebral Palsy Athletic Association, United States of America Deaf Sports Federation, Disabled Sports, USA, Wheelchair Sports, USA and United States of America Association of Blind Athletes, *Amici Curiae*, in Support of the Respondent, Casey Martin

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QUESTIONS PRESENTED

1. Whether the ADA prohibits discrimination against any *individual* who seeks access to a place of public accommodation regardless whether that person may also enjoy some financial benefit from his/her access or participation?

2. Whether the ADA requires a modification of a rule created by a professional sport organization in order to provide a reasonable accommodation to a person with a disability under Title III?

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INTEREST OF THE *AMICI CURIAE*[1]

The *amici*, American Association of Adapted Sports Programs[2], America's Athletes with Disabilities[3], Dwarf Athletic Association of America[4], National Wheelchair Basketball Association[5], United States Cerebral Palsy Athletic Association[6], United States of America Deaf Sports Federation[7],

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1. Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' letters of consent have been lodged with the Clerk of the Court. This brief was not written in whole or in part by counsel for a party, and no person or entity other than the *amici curiae*, their members, or their counsel have made monetary contribution to the preparation and submission of this brief.

2. AAASP's mission is to enhance the health, independence and future economic self sufficiency of youth with physical disabilities by facilitating a national disability sports movement, assisting communities in creating the best member programs possible for physically disabled youth electing to compete in team and individual sports on a local, regional and national level. *See* website at: www.aaasp.org

3. AAD's mission is to promote and sponsor sports, recreation, leisure health and fitness activities for children and adults with physical disabilities. *See* website at: www.americasathletes.org

4. DAAA was formed in 1985 to develop, promote and provide quality amateur level athletic opportunities for dwarf athletes in the United States. *See* website at: www.daaa.org

5. NWBA is comprised of 181 basketball teams within twenty-two conferences. The NWBA was founded in 1948, and today consists of men's, women's, intercollegiate, and youth teams throughout the United States of America and Canada. *See* website at: www.nwba.org

6. USCPAA provides assistance to member athletes with cerebral palsy, stroke, and traumatic brain injuries in coordinating their training and strives to enable its athletes to compete at their peak on local, regional, national, and international levels. *See* website at: www.uscpaa.org

7. USDSF provides year-round training and athletic competition in a variety of sports at the state, regional, national, and international level for developing and elite athletes. USDSF assists athletes in developing physical fitness, sportsmanship, and self-esteem. *See* website at: www.usadsf.org

Disabled Sports, USA[8], Wheelchair Sports, USA[9], and United States Association of Blind Athletes[10] provide services and support to disabled athletes, including elite disabled athletes, throughout the United States. Six of the *amici* coordinate training, competitions, and player selection and eligibility for the Paralympic and Deaf World Games as disabled sport organizations under the Ted Stevens Olympic and Amateur Sports Act[11], 36 U.S.C. §§ 220501-220529. The premier amateur sports competitions organized solely for disabled athletes is the Paralympics, which takes place every four years immediately following the Olympics, and the Deaf World Games. Growth not only in the participation numbers of Paralympic athletes, but also the size and prestige of the Paralympic Games prompted Congress in 1998 to amend the Amateur Sports Act of 1978 to

8. DS/USA's mission is to provide the opportunity for individuals with physical disabilities to gain confidence and dignity through participation in sports, recreation and related educational programs. Founded in 1967 Disabled Sports, USA is the nation's largest multi-sport, multi-disability organization. A national, non-profit, educational organization, DS/USA provides sports and recreation services to over 60,000 people annually, through a network of over 80 community-based chapters nationwide. *See* website at: www.dsusa.org

9. WSUSA was founded in 1956 as the National Wheelchair Athletic Association, the name of the organization was changed in 1994 to Wheelchair Sports, USA, to better reflect the organization's mission and goals which includes providing sport opportunities for elite wheelchair athletes. *See* website at: www.wsusa.org

10. The mission of USABA is to change the attitudes about the abilities of the blind and visually impaired. Since its founding in 1976, the USABA has reached over 100,000 blind individuals. During that time, the organization has emerged as more than just a world-class trainer of blind athletes; it has become a vocal champion of the abilities of America's legally blind residents. *See* website at: www.usaba.org

11. Dwarf Athletic Association of America, U.S. Cerebral Palsy Athletic Association, U.S.A. Deaf Sports Federation, Disabled Sports, USA, Wheelchair Sports, USA, and U.S. Association of Blind Athletes are the only disabled sport organizations that serve as governing authority for the training and selection of elite athletes for the Paralympics or Deaf World Games.

expand opportunities for sport for people with disabilities and to integrate disabled sport with non-disabled sport organizations. The amended law directs the USOC to act as the National Paralympic Committee to encourage and provide assistance to amateur athletic programs and competition for disabled individuals, including the expansion of opportunities for meaningful participation by disabled individuals in programs of athletic competition for non-disabled individuals. 36 U.S.C. § 220503(13). A wheelchair event has been included in the Olympic Games program as an exhibition event since 1984 during the Los Angeles Olympic Games. Recently, a clinic and exhibition by the U.S. Luge team to introduce hearing impaired youth to luge and conduct a talent search was also used as an opportunity to show children with disabilities that they could compete alongside non-disabled teammates and competitors. When USA bobsledder Robert Feliciano who is deaf arrived the hearing impaired youth communicated with him through sign language. When the children left he signed "good-bye" to them. Without the hard work of many to integrate sport, that experience may have never occurred.[12]

Disability sport refers to sport designed for or specifically practiced by athletes with disabilities.[13] The USOC oversees the organizations coordinating sport for people with disabilities. These organizations are called Disabled Sports Organizations (DSOs). All the DSOs are responsible for grassroots efforts to promote sport for people with disabilities. It is important to note that the DSOs are most often organized and named by *disability* (cerebral palsy, deaf, blind, dwarf, and wheelchair), whereas National Governing Bodies (NGBs) are named by

12. S. Knowles, *Meeting Bobsledder was Bigger Thrill for Deaf Children than Luge Run*, THE SALT LAKE TRIBUNE, December 13, 1998, at B5.

13. K. DePauw & S. Gavron, *Disability and Sport* (1995).

sport USA Baseball, USA Basketball, USA Hockey).[14] This distinction takes on even more significance in the professional sport segment since professional disability sport organizations do not exist in the United States. Thus, any elite disabled athlete who competes professionally in the United States must compete with non-disabled athletes and is governed by the professional sport's governing body, i.e., the Women's National Basketball Association, National Football League, Major League Baseball, and in this instance, the Petitioner, PGA Tour, Inc. (hereinafter referred to as "PGA"). The DSO *amici* have an interest in this appeal since the outcome may likely affect the access and opportunities afforded the disabled athletes they represent.

SUMMARY OF ARGUMENT

I. Casey Martin is a participant in a professional golf event operated by the PGA. The PGA Tour[15] is a place of public accommodation. Casey Martin as an individual with a disability is entitled to assert a discrimination claim under Title III of the American's With Disabilities Act. 42 U.S.C. § 12181-12182. Casey Martin is not an employee of the PGA; thus, his claim is not governed under Title I of the ADA. 42 U.S.C. § 12111-12112. Section 12181 prohibits discrimination against any individual with a disability. This section does not limit the protection afforded a disabled individual who also happens to have a financial interest or motive in seeking access to the place of public accommodation.

It is undisputed that the PGA is an entity which leases golf courses for the purpose of operating its golf events. Golf courses are expressly identified among the examples contained in Title III as places of public

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14. Eli A. Wolff, *Status of the Seven National Disabled Sports Organizations in the United States and Recommendations for the Future*. Unpublished paper, Brown University (1998).

15. When using the phrases "PGA Tour, Tour, or Tour event" hereinafter, the *amici* are referring to the professional golf events organized and operated by the Petitioner.

accommodation. 42 U.S.C § 12181(7)(L). The PGA erroneously seeks to avoid the clear coverage mandate of this Section by contending that a golf course is not being used as a "place of exercise and recreation" during PGA Tour events. While the categories identified in Section 12181 are considered exhaustive, the examples are not. Thus, even assuming for purposes of argument that the course is not being used for exercise and recreation, the PGA cannot contend in good faith, that it is not being used for purposes of exhibition and entertainment during the presentation of a professional golf event within the scope of section 12181(7)(C).

The competition areas of professional sport contests are clearly not exempted from coverage, and it is highly unlikely that Congress was unaware that professional sports contests took place in "stadiums", "auditoriums", "parks", "gymnasiums", "bowling alleys", and "golf courses". Yet Congress chose not to exclude professional sport contests from coverage of the ADA. Instead, Congress created twelve broad categories of places at which any number of activities or uses may take place. Congress further provided a non-exhaustive list of examples for the 12 categories. Nothing in the legislative history or text of the ADA suggest Congress intended to exempt either the competition areas or spectator areas of a professional sport contest from complying with the ADA. Section 12181(7)(C) clearly applies to places used for "exhibition or entertainment" including but not limited to theaters, concert halls, stadiums, and in this instance, a golf course. The PGA's entertainment objective is obvious and admitted by the LPGA in its *amicus* brief at p. 11 where it states ". . . professional sport depends on its entertainment value for its very existence."

Section 12182(a) provides a general prohibition against discriminating against an "individual" with a disability in the full and equal enjoyment of goods, services, facilities, privileges of any place of public accommodation. The PGA attempts to restrict the broad, general protections established in section 12182(a) to only the "clients or customers" of the

place of public accommodation. No such restrictive reading of the term "individual" is contained in the text of the statute. The reference to "client or customer", however, is expressly limited to sub-section 12182(b)(1)(A)(i-iii). *See*, 42 U.S.C. § 12182(b)(1)(A)(iv). Even if Casey Martin were required to be a client or customer of the PGA, he would clearly fall within the normal and ordinary definition and meaning of the terms "client or customer" as a participant competing on the PGA Tour.

II. The district court's finding that permitting a modification of a rule of golf to allow Casey Martin to use a cart during competition did not constitute a fundamental alteration of the PGA Tour event is well supported by the evidence presented to the district court, and should not be disturbed on appeal. Section 12182(b)(2)(A)(ii) identifies the elements and evidentiary burdens for a Title III discrimination claim. Casey Martin was required to and offered competent evidence that he was an individual with a disability, that a modification was requested, and that the modification requested was reasonable. The burden then shifted to the PGA to demonstrate that the requested modification would fundamentally alter the nature of the PGA Tour event. While PGA proffered evidence that the purpose of its rule requiring competitors to walk at all times during the competition was to inject the element of fatigue into the competition, the district court properly found that such purpose was not being fundamentally altered by permitting Martin to participate with the aid of a cart.

In reaching its findings and conclusions, the district court properly conducted an individual, fact specific inquiry relative to the stated purpose of the PGA rule, and Martin's individual disability and circumstances. An important element of the discrimination claim is the "individual" needs of the disabled person. The PGA's contention that only the nature of the public accommodation should be examined to determine whether a modification of a rule or policy would result in a fundamental alteration rather than conducting an individualized inquiry would be contrary to the broad goals and scope of the ADA.

The PGA also presumes that substantive rules of competition can not be waived without fundamentally altering the nature of the competition. No such presumption is identified in Title III. Section 12182 unambiguously provides that "reasonable modifications in policies, practices, or procedures" must be made. The statute does not say that only "non-substantive policies, practices, or procedures" are subject to modification.

ARGUMENT

I. THE ADA PROHIBITS DISCRIMINATION AGAINST ANY *INDIVIDUAL* WHO SEEKS ACCESS TO A PLACE OF PUBLIC ACCOMMODATION REGARDLESS OF WHETHER THAT PERSON MAY ALSO ENJOY SOME FINANCIAL BENEFIT FROM HIS/HER ACCESS OR PARTICIPATION.

A. Casey Martin's Claims Clearly Arise Under Title III of the ADA, not Title I.

The PGA contends that Casey Martin's claim for relief under Title III (42 U.S.C. § 12181 *et seq.*) of the ADA is actually a discrimination in the workplace complaint since Martin earns a living by participating in professional golf events. It is the contention of the PGA, that if Martin earns a living by participating in professional golf (an activity which PGA creates and provides), that Martin's association with the PGA, even though not characterized as employment, precludes a claim under Title III and limits Martin's remedies to those available pursuant to Title I (42 U.S.C. § 12111 *et seq.*). After restricting Martin's potential claims solely to Title I, the PGA next argues that Martin is an independent contractor; therefore, excluded from coverage of Title I of the Americans with Disabilities Act. Consequently, the PGA contends that Martin, an individual with a disability, is essentially entitled to no protection under the ADA for discriminatory practices by the PGA.

Whether Martin is an employee or an independent contractor under Title I is not an issue that is before this court, and it is further irrelevant to a determination under Title III.[16] It is undisputed that Martin is an individual with a disability. *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000). Title III does not limit its protections only to those individuals who have no financial motive associated with gaining access to a place of public accommodation.[17] The PGA mistakenly attempts to distinguish Martin's circumstances from a person seeking access to a public library for a job related function. (*See*, PGA Brief at p. 21, n.14.) The two situations are indeed analogous and the protections established in Title III are not restricted to only those "individuals" who are seeking access to a place of public accommodation for a non-work related purpose. The statute is silent as to any limitations resulting from the motivation or objectives of the disabled person seeking access. This construction is also consistent with the exclusive framework

16. Title III of the Americans with Disabilities Act applies to places of public accommodation and provides that "[n]o *individual* shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." (Emphasis added). 42 U.S.C. § 12182(a).

17. The Third Circuit has dealt with this issue in the context of a physician with a disability who was denied staff access privileges to a hospital in *Menkowitz v. Pottstown Memorial Medical Center*, 154 F.3d 114 (3rd Cir. 1998). Pottstown argued that since Menkowitz had a "unique business relationship" with the hospital, that he was not an "individual" covered by Title III. *Id.* at 121. The Third Circuit was mindful that Congress did not intend for Title III to govern any terms or conditions of employment. Employment practices are governed by Title I. *Id.* at 119. However, Congress was equally clear that no "individual" could be denied full and equal enjoyment of the goods, services, facilities and privileges of a place of public accommodation. Denying Menkowitz access to the hospital based upon his disability prevented him from benefiting from the hospital facilities needed to render services to his patients.

established in Title I to remedy discriminatory employment practices. Martin did not seek employment with the PGA, rather he sought access to a place of public accommodation, and a reasonable modification of rules defining such access, to permit him the full benefit and enjoyment of the opportunity to participate in a professional sport competition. The PGA Tour is the only elite level professional golf tour in the United States. Denying Martin access to participate on the Tour, denies him access to a place of public accommodation in violation of Title III.

B. The Competition Areas of Elite Sport Competitions Are Covered Under Title III of the Americans with Disabilities Act.

The preamble of the Americans with Disabilities Act demonstrates Congress invoked "the sweep of congressional authority" to enact broad legislation. 42 U.S.C. § 12101(b)(4). Congress enacted the ADA to ensure that individuals with disabilities would no longer face the continued existence of unfair and unnecessary discrimination and prejudice. *Id.* at (a)(9). Congress noted that "historically society has tended to isolate and segregate individuals with disabilities" and discrimination against them "continue[s] to be a serious and pervasive social problem." *Id.* at (a)(2). Congress further found that "individuals with disabilities continually encounter among other forms of discrimination, . . . outright intentional exclusions, . . . overprotective rules and policies, failure to make modifications to existing facilities and practices, . . . segregation, and relegation to lesser services, programs, activities, . . . jobs, or other opportunities." *Id.* at (a)(5). Congress stated that among its purposes in enacting this chapter was to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities. *Id.* at (b)(1) and (2). Excluding athletes with disabilities from participation in elite level athletic competition,

where reasonable accommodations can be made, denies them the "opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous . . ." which Congress so eloquently established as a purpose for the ADA. *Id.* at (a)(9).

ADA analysis should begin by looking at the plain language and the clear intent of the statute. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Title III of the ADA provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."[18]

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18. A public accommodation is defined as the following private entities if the operations of such entities affect commerce —

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(Cont'd)

42 U.S.C. § 12182(a) (2000). Prohibited discrimination under Title III includes the denial, on the basis of disability, of the opportunity to benefit from the goods, services, privileges, advantages, or accommodations of a private entity, such as the PGA. The legislative history of the ADA states the twelve categories of entities included in the definition of the term public accommodation are intended to be exhaustive, but the scope of the categories is intended to be construed broadly. Specifically, the history states "[t]he Committee intends that the 'other similar' terminology should be construed liberally, consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities." H.R. Rep. No. 485, 101st Cong., 2d Sess., pt.2, at 100 (1990), *reprinted in* U.S.C.C.A.N. 303. 383.

The broad and comprehensive language of the legislation favors including the PGA and other sport governing bodies within the group of private entities subject to Title III of the ADA. The PGA is engaged in commerce as it "is an organization formed to promote and operate tournaments for the economic benefit of its members, a highly skilled group of professional golfers." *Martin v. PGA Tour*, 984 F. Supp. 1320, 1323 (D. Or. 1998). The PGA is a part of the entertainment industry, offering competitive athletic events to the public, which in turn generate

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(Cont'd)

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

42 U.S.C. § 12181(7).

sponsorship, television, and advertising revenue to fund the prize money awarded to competitors. *Id.* Thus, a PGA Tour event is a place of public accommodation as "a place of exhibition or entertainment" just as a theater, concert hall, [or] stadium, . . ." 42 U.S.C. § 12181(7)(C). The golf courses where the PGA holds events fit clearly within the identified coverage of Title III as "places of exercise or recreation." 42 U.S.C. § 12181(7)(L).

Additionally, Congress is very knowledgeable about sport governing bodies and if it had any intention of exempting them from coverage, professional sport leagues and other governing bodies would have been named as exempt.[19] If Congress intended to exempt professional leagues and other sport governing bodies from the Americans with Disabilities Act, the statutory language would reflect that specific intent.

While the PGA and USGA briefs argue that neither they nor other sport governing bodies are expressly identified in the ADA list, they are not specifically exempted either. In keeping with the broad construction of the legislation, the Supreme Court and other federal courts have applied the ADA to contexts that were not expressly identified by Congress.[20] As a Tour

19. We need only look to the relationship between professional sport leagues and the Sherman and Clayton Antitrust Acts to find specific statutory exemptions for professional sport leagues in the Sports Broadcasting Act of 1960, 15 U.S.C. § 1291-1294, and Major League Baseball with the enactment of the Curt Flood Act of 1998, 15 U.S.C. § 27.

20. *See, e.g., Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206 (1998) (applying ADA to inmates in state prison system); *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237, 1241 (11th Cir. 2000) (Title III not inapplicable as a matter of law to cruise ships); *Florida Paraplegic Ass'n v. Miccosukee Tribe of Indians of Florida*, 166 F.3d 1126, 28-29 (11th Cir. 1999) (applying Title III of ADA to Indian reservations operating casinos as places of entertainment); and *Bowers v. NCAA*, 2000 U.S. Dist. LEXIS 16104 (D. N.J. 2000); *Tatum v. NCAA*, 992 F. Supp. 1114, 1119-1120 (E.D. Mo. 1998) and *Ganden v. NCAA*, 1996 U.S. Dist. LEXIS 17368 (N.D. Ill 1996) (applying Title III to the National Collegiate Athletic Association as an operator of a place of public accommodation).

competitor Casey Martin is a participant in an activity provided by the PGA as a place of public accommodation.

The briefs of the *amici*, USGA, ATP/LPGA, and Equal Employment Advisory Council argue that even if they are places of public accommodation within the meaning of the ADA, the competition areas are not subject to the ADA under the theory that Tour events are mixed-use. This debate is flawed and incidental, because every public accommodation has mixed uses. As a place of public accommodation, the PGA has many different uses for a myriad of individuals involved in staging a PGA Tour event. The PGA provides opportunities for employees to work. Obviously employees who work for the PGA will be covered by Title I and the private areas open to employees only will not be subject to Title III. The PGA also provides opportunities to participate in the events as competitors and spectators which meet the statutory definition of activities covered under Title III. Competitors, spectators, and members of the media are some of the myriad of individuals who will be participating in the events. These individuals are there to enjoy the benefits and privileges of the tournament operated by the PGA.

In the alternative, the manner in which a PGA event is operated does not lend itself to the geographic lines of separation proffered by the *amici*. Participants in the benefits and services provided by the PGA are in all areas of the golf course. Event volunteers, photographers, writers, VIPs, sponsors, and some spectators are often within the competition areas and the golfers may find themselves in the spectator areas when chasing down an errant shot. Thus, the competition area is sometimes hard to define geographically because the lines between the competition and the spectator areas are blurred.[21] Moreover, the cases relied

21. During the competition, the placement of the ropes are arbitrary as they are often moved as tournament play proceeds and a stray shot enters the spectator areas and golfers must play their balls from where they landed. The placement of the ropes is also such that there is not a single monitored entrance and exit to the competition areas. It is not (Cont'd)

on by the *amici* are distinguishable from *Martin*.[22] In those cases the mixed use areas were defined as private employee-only enclaves within a public accommodation that the public on the cruise ship or the film studio production lot could not access. Casey Martin is not an employee in an employee-only area. The competition created by the PGA is open to the general public. Any member of the general public can pay a $3,000 entry fee which entitles them to compete for a spot on the PGA Tour. In addition, the competition areas during the actual presentation of the Tour event are also open to many people, spectators and competitors alike, who respond to the invitation from the PGA to experience the entertainment and exhibition it provides.

C. Title III Prohibitions Are Not Restricted To Only Clients Or Customers. Any Individual Discriminated Against Is Entitled To Protection.

The PGA contends that even if Title III applies to competition areas of a professional sport event, that Title III limits its scope to only "clients or customers" of the place of public accommodation. The PGA then contends that Martin is not consuming and using the services, but that he *is* the goods and services being provided. This contention is contrary to the express language in Title III and the legislative intent; it is a strained and overtly narrow definition of "client or customer"; and it is also a gross over-simplification of the presentation of a professional PGA Tour event.

Section 12182(a) provides

> No *individual* shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,

(Cont'd)
completely restricted access, as the final group of golfers is often trailed by spectators walking along with the competitors on the fairways.

22. *Stevens v. Premier Cruises, Inc.*, 215 F.3d 1237 (11th Cir. 2000) and *Jankey v. Twentieth Century Fox Film Corp.*, 212 F.3d 1159 (9th Cir. 2000).

> advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation. (Emphasis added).

The reference to "clients or customers" is restricted to section 12182(b)(1)(A)(iv) which provides: "For purposes of clauses (i) through (iii) of this subparagraph, the term 'individual or class of individuals' refers to clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement." While the terms "client or customer" are not defined, it is clear that Congress' use of these terms was not intended to restrict the general class of persons protected under Title III, and the comprehensive and broad remedial framework established in the ADA. If Congress had intended Title III protections to be restricted to "clients and customers", it would not have instead chose to use the broader term "individual" in the general prohibition paragraph reflected in section 12182(a). The terms "client or customer" expressly apply only to subparagraph (A) of section 12182(b)(1). Casey Martin's claim arises under section 12182(a) rather than section 12182(b)(1)(A). This paragraph, *(a) General rule*, does not require that an individual also be defined as a "client or customer" in order to be afforded protection under section 12182.

The use of the terms "clients or customers" was intended to ensure that a public accommodation's obligations are not extended or changed by virtue of its lease or contractual arrangements with another entity, and to clarify that a public accommodations' obligations do not extend to the clients or customers of the entity with which it enters into leases or contractual agreements. There is no suggestion that Congress intended to restrict the general obligations imposed in section 12182(a). "The purpose of Title III . . . is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life."

H.R. Rep. No. 101-485, pt. 2, at 99 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 381-82.

Use of the broad term "individual" in section 12182(a) was most surely intended to authorize the broadest and most inclusive application of Title III protections, including protecting Martin who is an *individual* with a disability. Assuming *arguendo*, that the terms "client or customer" used in section 12182(b) restrict the meaning of the term "individual" used in section 12182(a), Martin is a client or customer of a place of public accommodation. Section 12182 does not specifically define the terms "client or customer"; thus, these terms must be construed according to their ordinary and natural meaning. *Curtis-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 81, 115 S. Ct. 1223, 131 L. Ed. 2d 94 (1995); *Neff v. American Dairy Queen Corp.*, 58 F.3d 1063, 1066 (5th Cir. 1995), *cert. denied*, 516 U.S. 1045, 115 S. Ct. 704, 133 L. Ed. 2d 660 (1996). *Webster's Dictionary* defines the term "client" as "a person who engages the professional advice or services of another." The term "customer" is defined as "one that is a patron or that uses . . . services." As a participant Martin most assuredly is a client and customer of the PGA when it operates and presents a PGA Tour event. While Martin may be providing goods and services to spectators, members of the media, and sponsors, he also simultaneously consumes goods and services directly and inextricably related to his *access to and use of* the place of public accommodation. Martin consumes the opportunity to participate as a competitor in an elite professional golf event operated by the PGA. He consumes the sport of golf. He may be consuming it differently than a spectator, sponsor, or media representative — but the purpose and manner in which services or goods are used is not relevant to the applicability of Title III to the place providing the goods or services. The PGA presents and stages a premier golf sporting event. The PGA would like to define their service as only a viewing opportunity for one class of persons — spectators. However, in addition to a viewing opportunity, the PGA also provides participation opportunities to persons such as Martin.

Title III expressly identifies the "opportunity to participate" as a protected activity. 42 U.S.C. § 12182(b)(1)(C). This participation has already been interpreted to include participating in amateur sport contests. *See Bowers v. NCAA*, 2000 U.S. Dist. LEXIS 16104 (D. N.J. 2000) and *Tatum v. NCAA*, 992 F. Supp. 1114, 1119-1120 (E.D. Mo. 1998). The PGA has offered and indeed no legitimate reason exists to exclude professional sport contests from Title III's protections. In this case PGA is the operator of a place of accommodation just as the NCAA is an operator and/or exerts significant control over the operations of places of public accommodation. Interestingly, both the NCAA and the PAC 10 Athletic Conference permitted Casey Martin to use a cart during NCAA and Conference competitions. During a PGA Tour event, the PGA takes over the golf course and exerts total control over its operations including: regulating ticket prices; controlling the types of beverages and goods that may be sold; regulating profits earned from concession sales; controlling broadcast and media rights; and controlling who will be allowed to participate in the activities taking place at the golf course. This same level of control resulted in the NCAA being found to be an "operator" of a place of public accommodation, and the same result should apply to the PGA. *Tatum*, 992 F. Supp. at 1120.

II. THE ADA REQUIRES A MODIFICATION OF A RULE CREATED BY A PROFESSIONAL SPORT ORGANIZATION IN ORDER TO PROVIDE A REASONABLE ACCOMMODATION TO A PERSON WITH A DISABILITY UNDER TITLE III.

A. The District Court Properly Found that Martin's Use of a Golf Cart Was Not A Fundamental Alteration Of The PGA Tour Competition

Title III at Section 12182(b)(2)(A)(ii) identifies, as discrimination,

> a failure to make reasonable modifications in policies, practices, or procedures, when such

> modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless *the entity can demonstrate* that making such modifications would *fundamentally alter* the nature of such goods, services, facilities, privileges, advantages, or accommodations. (Emphasis added).

The district court in *Martin* properly followed and applied the standard adopted by the Fifth Circuit in *Johnson v. Gambrinus Company/Spoetzl Brewery*, 116 F.2d 1052 (5th Cir. 1997). In *Johnson*, the Fifth Circuit held that in determining whether a reasonable modification would result in a fundamental alteration of the place of public accommodation, the inquiry must focus on the "specifics of the plaintiff's or defendant's circumstances and not on the general nature of the accommodation." *Id.* at 1060. The district court conducted an extensive fact finding analysis and determined (1) that nothing in the rules of golf requires or defines walking as part of the game; (2) the game of golf generally consists of playing a ball from teeing ground into the hole by a stroke or successive strokes in accordance with the rules; (3) Martin explored the possibility of using other various artificial aids to walking such as in-shoe orthosis and ankle-foot orthosis; (4) while injecting the element of fatigue may be a cognizable purpose, the fatigue factor cannot be deemed significant under normal circumstances; (5) approximately only 500 calories would be expended by walking a golf course in a five hour time period; (6) PGA golfers have numerous intervals of rest and opportunities for refreshment or calorie replacement; (7) fatigue due to low intensity exercise is primarily a psychological phenomenon; and (8) that Martin's disabling condition caused him more fatigue, even when provided the use of a cart, than the average PGA Tour golfer endured. *Martin*, 994 F. Supp. at 1249-1252, *affirmed*, 204 F.3d 994, 1000 (9th Cir. 2000). Since the *purpose* of the walking rule was not being obstructed by permitting Martin to use a cart, the requested modification did not fundamentally alter the public accommodation, i.e. the golf

competition. This finding of fact must be undisturbed on appeal unless clearly erroneous. A finding is clearly erroneous only "when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948); *Commissioner of Internal Revenue v. Duberstein*, 363 U.S. 278, 291, 80 S. Ct. 1190, 1200 (1960).

Whether an alteration is fundamental is a fact question even though what standard must be used to determine what is fundamental may pose a mixed question of law and fact. The district court used an individualized, fact finding inquiry examining both the purpose of the rule from which Martin sought a modification to determine its impact on the nature of the place of public accommodation, (i.e. the Tour competition), and Martin's individual circumstances attendant to his disability. The only purpose proffered by PGA was that the rule requiring all competitors to walk was to inject fatigue into the Tour competition. The district court and Ninth Circuit accepted the PGA's purpose as cognizable but further found that the proffered purpose, *fatigue injected into the competition*, was not being fundamentally altered since Martin's individual circumstances caused him significant fatigue.

Both the district court and the Ninth Circuit rejected the PGA's argument that any rule with a cognizable or rational purpose could not be modified without resulting in a fundamental alteration. The PGA and USGA also suggest that unless their rule is shown to be a pretext for discrimination, there is no need to determine whether the rule, if waived, could fundamentally alter the Tour competition. (PGA Brief at p. 35.) The PGA Tour and USGA's arguments and the decision of the Seventh Circuit in *Olinger v. United States Golf Association*, 205 F.2d 1001 (7th Cir. 2000) ignore the clear language of section 12182(b)(2)(A)(ii) of the ADA. First, the statute requires that if a disabled individual requests a place of public accommodation to make a reasonable modification, such

modification must be made, unless the place of public accommodation can demonstrate that the specific modification requested would fundamentally alter the nature of the public accommodation. The burden of proof is squarely upon the entity seeking to avoid providing a reasonable modification, in this instance the PGA. To require Martin to prove that the rule is a pretext for discrimination is contrary to the unambiguous language of the statute and would improperly impose a burden of proof that is not created by the statute. Second, unlike Title I where a plaintiff may have to demonstrate that the alleged non-discriminatory reason for his or her discharge is a pretext for discrimination, Title III requires no such inquiry.[23]

The order of proof provided in section 12182(b)(2)(A)(ii) is unambiguous. A Title III plaintiff must demonstrate (1) that he is disabled; (2) that a modification has been requested; and (3) that the modification is reasonable. *Martin*, 994 F. Supp. at 1248; and *Johnson v. Gambrinus*, 116 F.3d 1052, 1059 (5th Cir. 1997). The burden then shifts to the operator of the public accommodation to demonstrate that the requested modification would fundamentally alter the nature of the public accommodation. *Johnson* at 1059. The PGA's proposed analysis would effectively render Title III applicable only to instances of intentional discrimination and eliminate its burden of proof.

23. A Title I plaintiff can prove she was discharged because of her disability either by proffering direct evidence, or if direct evidence is lacking, through a three-stage order of proof articulated by this Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). The Title I plaintiff must first establish a *prima facie* case of discrimination by showing that "she is a member of a protected group who has been denied an employment opportunity for which she was otherwise qualified." *Lemire v. Silva*, 104 F. Supp. 2d 80, 90 (D. Mass. 2000). This showing gives rise to an inference that the employer discriminated due to the plaintiff's disability. The burden then shifts to the employer to demonstrate a legitimate, nondiscriminatory reason for discharging the employee. If the employer can do so, the special benefit of the first showing disappears and the plaintiff must show that the employer's proffered non-discriminatory reason is a pretext for discrimination.

Title III outlaws not just intentional discrimination, but also practices that have a unequal impact upon persons with disabilities even in the absence of any conscious intent to discriminate.

> In enacting the ADA, Congress specifically found that individuals with disabilities continually encounter various forms of discrimination, including *outright intentional exclusion*, the *discriminatory effects* of architectural, transportation, and communication barriers, overprotective rules and policies, *failure to make modifications* to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and *relegation to lesser services, programs, activities, benefits*, jobs, or other opportunities.

(Emphasis added). 42 U.S.C.S. § 12101(a)(5). The ADA was enacted "to provide a clear and comprehensive national mandate for the *elimination* of discrimination against individuals with disabilities." (Emphasis added). 42 U.S.C. § 12101(b)(1). Congress clearly intended to protect disabled persons not just from intentional discrimination, but also from thoughtlessness, indifference, and benign neglect. *Crowder v. Kitagawa*, 81 F.3d 1480, 1483-1484 (9th Cir. 1996). Any entity, sport organization or not, under the ADA bears the burden to demonstrate that the requested modification will result in a fundamental alteration to the goods or services. It would be contrary to the clear language of the statute to create a presumption favoring a sport organization, or to impose an improper burden of proof to the disabled individual requesting the modification. The PGA failed to sustain what was clearly its burden of proof and the findings of the district court should not be disturbed.

B. ADA Does Not Provide For Any Presumption Or Deference For Discriminatory Rules Created By Sport Organizations

The PGA attempts to distinguish between substantive[24] and nonsubstantive rules. Presumably, a waiver or modification of a nonsubstantive rule would not fundamentally alter their Tour competition and the waiver or modification of any substantive rule would fundamentally alter their Tour competition. PGA also states that it is "entirely appropriate" for a court to determine whether a rule is substantive, but an individual or case-by-case inquiry is not the correct standard to use in reaching its determination. (PGA Brief at p. 34). Section 12182(b)(2)(A)(ii) mandates that a place of public accommodation must make "reasonable modifications in policies, practices, or procedures". This section does NOT provide that only *nonsubstantive* "policies, practices, or procedures" must be modified. The PGA is attempting to rewrite the statute and restrict the Congressional mandate to only *nonsubstantive* rules. All policies, practices, and procedures are subject to modification. The PGA has provided no rationale or justification for this revision of the statute, and certainly restricting or limiting the scope of the statute would run contrary to the broad remedial intent clearly expressed by Congress.

The USGA contends that a waiver of any rule is not required if the purpose of the rule is rational. USGA *amicus* brief at p. 20. A rule is apparently rational, under the analysis of the USGA, if the sport organization adopting the rule determines in good faith that waiver of the rule might result in a substantial competitive advantage. As precedent, the USGA offers several cases in which sport organization rules were challenged on antitrust grounds.[25] The USGA's argument is squarely

24. The PGA defines a "substantive rule" as one that "is intended to, and potentially does, affect the outcome of a particular competitive event." (PGA Brief at p. 10, n.12).

25. *NCAA v. Board of Regents*, 468 U.S. 85 (1984) (antitrust challenge to broadcast limitations of college football); *Gunter Harz*

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wrong. Antitrust law burdens are not the proper standard for courts to use when determining whether a rule should be modified for an athlete with disabilities. The USGA's argument relies on a standard in which a plaintiff alleges an anti-competitive impact of a sport rule. Once the plaintiff establishes the initial burden of a substantial market foreclosure, the burden shifts to the defendant to establish a rule of reason defense. This defense requires that the rule is rationally related to a legitimate goal of the sport and is applied in its least restrictive form. Nowhere in the ADA statute or legislative history is there language which resembles this defense or even a suggestion that courts should adopt such a standard. In effect, such a standard would give sport governing bodies an open license to discriminate against those with disabilities, provided there was a rational reason for a particular rule. This flies in the face of the broad and comprehensive protections mandated by Congress.

When faced with lawsuits involving the rulemaking authority of sport governing bodies, courts generally adhere to a theory of limited judicial review. While limited in its power to review, the theory does not suggest that courts will defer to the unfettered judgments of professional sport leagues and other sport governing bodies. Any characterization from the USGA, ATP/LPGA briefs to the contrary is inaccurate. In general, precedent shows that courts will intervene in sport governing body decisions in a variety of circumstances, such as situations where the sport governing body exceeds the scope of its authority, breaks its own rules, acts in an arbitrary and capricious manner, violates public policy, or violates constitutional rights or federal

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Sports, Inc. v. United States Tennis Association, 665 F.2d 222 (D. Neb. 1981) (antitrust challenge to USTA rules barring the use of certain tennis rackets in sanctioned competition); and *Brookins v. International Motor Contest Association*, 219 F.3d 849 (8th Cir. 2000) (antitrust challenge to rules barring transmissions like those manufactured by plaintiffs from auto races).

statutes.[26] Judicial intervention is warranted on statutory grounds under the ADA, as well as public policy grounds favoring the integration of disabled athletes into mainstream athletics wherever possible. *See* Americans with Disabilities Act, 42 U.S.C. §§ 12101(a) and (b) and Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220503(a)(13). According to their briefs, petitioner and *amici* cannot agree on the definition of a fundamental alteration, so how can the courts trust that proper, fair, and just decisions will be made which will ensure that elite level athletes with disabilities can participate, compete, and avoid segregation from non-disabled competitors?

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26. *See Atlanta National League Baseball Club v. Kuhn*, 432 F. Supp 1213 (N.D. Ga. 1977) (Major League Baseball commissioner exceeded scope of authority in penalty levied on Atlanta Braves); *Lindland v. USA Wrestling Association*, 2000 U.S. App. LEXIS 21754 (7th Cir. 2000) (USA Wrestling and USOC declined to follow their own rule on qualification for US Olympic Greco-Roman wrestling competitors); *California State University, Hayward v. NCAA*, 47 Cal. Ap. Ed 533 (Cal. Ct. App. 1975) (athletic association violated its own rule when applying rule retroactively); *Christ the King Regional High School v. Catholic High Schools Athletic Association*, 624 N.Y.S.2d 755 (1995) (athletic association violated own rule and acted in arbitrary and capricious manner in applying rule limiting out of state play); *Louisiana H.S. Athletic Association v. St. Augustine High School*, 396 F.2d 234 (5th Cir. 1968) (black high school singled out and subjected to different league entrance criteria in athletic association made up of white schools); *Ludtke v. Kuhn*, 461 F. Supp. 86 (S.D.N.Y. 1978) (Major League Baseball's rule barring female reporters from locker room violates equal protection clause); *NCAA v. Board of Regents*, 468 U.S. 85 (1984) (college football broadcasting limitations violate antitrust law); *Philadelphia World Hockey, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462 (1972) (NHL reserve clause and other rules restricting free agency subject to antitrust law when challenged by third party competitor); *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1977) (NFL free agent compensation rule violates antitrust law); and *Law v. NCAA*, 134 F.3d 1010 (10th Cir. 1998) (rule limiting assistant coaches income violates antitrust law).

C. Permitting Casey Martin To Use A Cart Was A Reasonable Modification

The finding by the district court and affirmed by the Ninth Circuit that Martin's requested modification was reasonable and would not fundamentally alter the PGA Tour competition was clearly supported by the evidence. The petitioner and *amici* focus on two points in challenging the reasonable modification that Casey Martin requested. First, they argue that it alters a substantive rule of golf. We disagree. While the PGA says walking is fundamental, an examination of the 400 year old rules of the game shows us that in the early days of the game, gentlemen in Scotland rode horseback from shot to shot on the course.[27] Also one must further question whether the walking rule is substantive in that it is not codified in the USGA Rules of Golf [28] as published by the USGA and the Royal and Ancient Golf Club of St. Andrews, Scotland. The rules of golf are extensive and complex. Currently the USGA's rules of golf number 34 with three appendices and well over 125 subsections. The Royal and Ancient Rules of Golf are 170 pages in length. If walking is such an important rule, why is it not clearly stated along with other rules on playing the sport. Furthermore, if walking adds the fatigue element to elite level golf competition and riding in a cart gives an outcome affecting competitive advantage to a golfer, then why do so many Senior PGA Tour and Senior Men's and Women's Amateur Championship competitors choose to walk the course when the rules allow for use of a cart? If riding in a cart altered a substantive rule to the degree proffered by the PGA Tour and *amici*, good competitive judgment would lead *all* senior golfers to use carts to win.

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27. G. Kimball, *Winning is Not Always Special*, IRISH TIMES, November 20, 2000 at 24.

28. The USGA claims the walking rule has been stated as a requirement of the U.S. Open since 1955 via the participant's application form. USGA *amicus* in *Martin v. PGA Tour*, Ninth Circuit Court of Appeals at 21.

Second, Petitioner and *amici* focus on the importance of uniformity in rules and conditions of competitions. It is impossible for the PGA to provide uniform conditions and a level playing field. For example, very few events employ a blind draw for imposing tee times. Those golfers scheduled at optimal tee times may golf under different conditions (heat, humidity, golfer's own preferred time of day) than those in the early morning or later tee times, thus, receiving a competitive advantage by the very rules of the event. It would be interesting to discover the last time crowd favorite Tiger Woods received the early morning or very late tee times. Another example of a lack of uniformity in the rules comes from the criteria for joining the Tour. Qualifying School is widely known as a grueling experience. Those golfers who win an exemption onto the tour are given the advantage of not having to go through Qualifying School where even the best of golfers may have a bad showing and miss the cut for the Tour.

One reason elite disabled athletes seek integration with non-disabled athletes is due to the manner in which disability sport is organized — by disability, not sport. Elite disabled athletes seek full integration with non-disabled competitors with limited rule modifications on the basis of their disability.[29] As an elite level golfer Martin only requested that modification that was absolutely necessary to afford him the opportunity to participate. Put bluntly, using a cart is the *only* way he can play. With each step to and from the cart to shots and into the rough for stray balls, Martin risks breaking his leg which may lead to its amputation. Martin is still the only athlete on the Tour with a modification of the walking rule. In fact, in the two years since Martin received his injunction, the Tour has not seen a

29. Some may suggest that both Tom Dempsey and Jim Abbott received rules modifications since they were permitted to employ techniques or wear assistive devices not normally permitted. Interestingly, both the NFL and Major League Baseball allowed these potential "modifications" without hesitation. Additionally, permitting Abbott and Dempsey to participate did not create a flood of requests from disabled baseball and football players.

rise in the number of competitors with a disability seeking to invoke the ADA to modify a rule. As disclosed by the USGA in its *amicus* Brief, it has only received two requests for modifications from golfers in this same time period. *See Olinger,* 205 F.3d 1001 (7th Cir. 2000) and *Jones v. USGA*, No. A-00-CA-278 JN (W.D. Tex. Aug. 30, 2000), *appeal pending* (5th Cir. No. 00-50850). Thus, there is not likely to be a groundswell of competitors seeking individual accommodations.[30] Additionally, those involved in the sanctioning bodies of golf are well-versed in rule and decision making and conducting such individual assessments if requested. The USGA essentially conceded that not only will individual assessments be necessary, but that it is perfectly capable of handling such requests.[31]

30. Although reluctant to even respond to the "far fetched" scenarios scattered throughout the ATP/LPGA *amici* brief, it is important to note that most elite and amateur sport competitions organized solely for people with disabilities conform to the same rules as those for non-disabled sport. For example, both the wheelchair basketball and dwarf basketball competitions use a standard basket height and three point shot distance. The suggestion that a "short" person would request a lower basket or closer three point shot distance is insulting to disabled and non-disabled athletes alike.

31. USGA approved *A Modification of The Rules of Golf for Golfers With Disabilities* in 1997 (available at: http://www.usga.org/rules/golfers_with_disabilities.html). Therein USGA specifically states that the desired result, of the modified rules, should allow the disabled golfer to play equitably with a non-disabled individual. The modified rules also establish a Committee procedure whereby individual requests can be reviewed.

CONCLUSION

Elite professional disabled athletes rarely seek modification of rules. Instead, as with any other elite athletes, non-disabled or otherwise, disabled professional athletes seek to compete on an even playing field, according to the rules of the sport played, all consistent with the truest nature and spirit of competition and sportsmanship. Several notable disabled athletes have participated in non-disabled professional and Olympic sport without modification of the rules. Prominent disabled athletes include place kicker Tom Dempsey (NFL), outfielders Pete Gray, Jim Eisenreich, and Curtis Pride and pitchers Bert Shepherd and 1988 Olympian Jim Abbott (MLB), guards Ervin "Magic" Johnson and Mahmoud Abdul-Raouff (NBA), 2000 Olympic 10,000 meter runner Marla Runyon and pentathlete Jackie Joyner-Kersee (USA Track and Field), and Robert Feliciano (USA Luge). Athletes, both non-disabled and disabled, inspire those around them, just as the nature of sport inspires the athlete.

Many watch disabled athletes compete in sheer disbelief at the courage and passion reflected in the athletes. The value and importance of sport for people with disabilities is reflected at all levels of society. Hundreds of organizations exist to develop recreational and competitive sport programs for people with disabilities. From grassroots efforts to organize the first wheelchair marathon in a community, to selection of athletes for the United States Paralympic Team or Deaf World Games Team, many people and organizations contribute to opening doors and opportunities for people with disabilities. But perhaps the most defining moment for people with disabilities, including athletes, occurred on July 26, 1990 with the passage of the Americans with Disabilities Act. Casey Martin's requested modification was reasonable, and does not fundamentally alter the PGA Tour competition. The judgment of the Court of Appeals in this matter should be affirmed in all respects.

Respectfully submitted,

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